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## *TennCare Eligibility Appeals*

### **Quick Cases, Big Pay-Off**

February 25, 2015

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## **A Perfect Storm for TennCare Applicants**

- The Affordable Care Act established the online insurance exchange, known as the federally facilitated marketplace (FFM) or [www.healthcare.gov](http://www.healthcare.gov) on October 1, 2013.
- In January 2014, TN defied the ACA & became the only state to close its doors to new Medicaid applications, requiring applicants to apply for TennCare through the FFM.

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## **A Perfect Storm for TennCare Applicants**

- The FFM had serious problems throughout the fall of 2013 and much of 2014.
- The state's TennCare Eligibility Determination System (TEDS) was supposed to interface with the FFM by October 1, 2013. It never got close to launching and the state has recently announced it will scrap the project & rebid.

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## **A Messy Aftermath**

- Tens of thousands of Tennesseans were unable to apply despite their best efforts.
- Thousands applied to the FFM, waited for months and were told to reapply. Their new applications overwrote the earlier applications.
- TennCare coverage starts from the date of application. ∴ govt. flaws = delayed coverage.
- Thousands were stuck with medical debt that should have been covered.

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## **Wilson v. Gordon**

- On 9-2-14, in *Wilson v. Gordon*, the U.S. District Court for the M.D. Tenn. granted a preliminary injunction ordering the state to afford an administrative hearing to TennCare applicants whose applications had been delayed beyond federal processing limits
- 45 days to process all cases except 90 days for applications for CHOICES, the TennCare program that covers nursing home and home-based care.

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## **A Wave of Erroneous Decisions**

- TennCare has now belatedly issued decisions on thousands of delayed applications.
  - Many were wrongly denied, often because the applicant “failed to provide requested info” that had in fact been provided multiple times.
  - Many other people were enrolled in TennCare, but their coverage started long after they first applied, and they are stuck with medical debts that would be covered if eligibility started on the correct date.

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### Thousands of Appellants Need Help

- Many who got erroneous TennCare eligibility decisions have appealed.
- They get confusing notices and are often daunted by a bureaucracy that has already messed up their applications for months on end.
- While appeals are difficult for pro se appellants, with knowledgeable assistance, many are easy to win.

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### Law Governing the Appeal Process

- [42 Code of Federal Reg. 431.200 et seq.](#)
- [TennCare Rules 1200-13-19-.01 et seq.](#) for most appeals.
- Tennessee Uniform Administrative Procedures Act, [TCA 4-5-301](#), et seq.

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### Relief Available

**[42 CFR §431.246](#) Corrective action.**

The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, ... if—

- (a) The hearing decision is favorable to the applicant or beneficiary; or
- (b) The agency decides in the applicant's or beneficiary's favor before the hearing.

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### Anyone Can Assist at Hearing

An appellant has a right to “represent himself or use legal counsel, a relative, a friend, or other spokesman.”

[42 CFR 431.206\(b\)\(3\)](#)

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### Conduct of Hearings

- By phone, unless in person hearing is requested by the appellant.
- Conducted by TennCare Bureau Administrative Judge.
- TennCare or DHS counsel represents the agency.
- More relaxed rules of evidence apply . [TCA 4-5-313](#).

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### Common Eligibility Date Issues

- Tried to apply on earlier date but was prevented because the FFM was down.
- Applied earlier, but the FFM has no record of the earlier application.
- When person submitted new information or proof (e.g., Social Security No. for newborn), FFM treated that date as the application date.
- Paper application submitted, coverage started from date of approval rather than submission.

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### Common TennCare Processing Issues

- TennCare sends a request for information, rejects application if not returned within ten days.
- When applicants appeal, Health Care Finance Administration sends another request for information and denies the appeal if not returned in ten days.
- Many appellants submit the requested info repeatedly to the FFM, TennCare and HCFA, are still denied for not submitting it.

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### FFM's Mistake or TennCare's Mistake?

- **Makes no difference!** The state must fix it.
- The state is ultimately responsible for providing an appeal to applicants harmed by FFM errors or failures to act. *Wilson v. Gordon*, 2014 U.S. Dist. LEXIS 122010 (M.D. Tenn. 9-2-14) (Prelim. Inj.)
- The state appeal must therefore provide corrective action to remedy errors by either the FFM or a state agency.

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### Proving FFM's Systemic Problems

We all know that:

- Water is wet.
- The FFM has – to put it politely – “had issues.”

But how do you prove it at a hearing?

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### Proving FFM's Systemic Problems

- Ask experienced assister to attest to the general problems in 2013-2014.
- CMS, which runs the FFM, acknowledged in October 2014:
  - “We currently do not have the capacity to determine whether a given applicant submitted their application on an earlier date to the FFM.”
- GAO has reported on the IT problems at the FFM.
- **Copies of both available at TJC website:** [www.tnjustice.org/tenncare-case/#training](http://www.tnjustice.org/tenncare-case/#training).

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### Proving Earlier Application Date

Same CMS guidance, available at TJC website, says:

“If the applicant contacts the state and attests to an earlier initial submission date, the following options are available to states to ensure the correct date of coverage is applied to the individual:

- Accept self-attestation that the individual submitted a previous application and use that date to establish the coverage effective date, or
- Request documentation from the individual of the original FFM application date (e.g., FFM Eligibility Results Notice)”

**But** FFM did not mail FFM Eligibility Results Notices to phone applicants.

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### Other Proof of Earlier Submission Date

- Access appellant's FFM email account.
- Show Appellant has application ID# different from the ID# of the application ultimately approved.
- Submit appellant's phone records showing calls to FFM.
- Submit hospital records or other assister records that may corroborate.
- Examine “running record” from Tennessee Health Connection or TennCare Advocacy Program, which may be in appeal packet.

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### Other Proof of Earlier Submission Date

- FFM call center has records of all calls.
- FFM will tell appellant by phone the dates of all contacts, but won't confirm in writing.
- Ask appellant and a third person to make 3-way call to the FFM to get the dates of appellant's calls. Use third person on the call as hearing witness to confirm FFM's answer.

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### Easy Path to Proving Eligibility

You must also prove appellant was eligible when first applied. In most cases, these questions are enough:

1. Were you found eligible for TennCare as of <date>?
2. Was there any change in who was in your household between the date of first application and when you were found eligible? [No]
3. Was there any change in your household income between the date of first application and when you were found eligible? [No]

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### Plan B - If Easy Path Not Available

- IF
  - the appellant's household or income changed between the initial application date and when he/she was approved,
- OR
- The application was denied as ineligible,

Submit proof of who was in the household, and their income, to establish eligibility.

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### TennCare Eligibility

- If you receive an appeal referred from TJC, we will have first screened the appellant and confirmed she is eligible. We'll tell you what to submit at the hearing to prove it.
- If the case is not from TJC and has not been screened, check two requirements for TennCare eligibility:
  - Categorical (children, pregnant women, parents and caretaker relatives, people with disabilities, women with breast or cervical cancer, over 65)
  - Household Income below limit.

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### Household Income

- Who counts as a member of the household?
- What types of income count?



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### TJC's D.I.Y. Eligibility Toolkit is Online

<http://www.tnjustice.org/help/trainings/toolkit/>

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## Special Cases

If you have a case that involves:

- Applications for CHOICES, TennCare’s program covering nursing home and home-based care, or
- Overcoming an official decision that the appellant’s household income made them ineligible

Call TJC for further assistance: 1-877-608-1009.

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## Be Someone’s Hero - Take a Case!

Please volunteer to help someone with their appeal by calling:

Marysa LaRowe  
Tennessee Justice Center  
Phone: 615-255-0331  
Toll free: 877-608-1009  
FAX: 615-255-0354  
[mlarowe@tnjustice.org](mailto:mlarowe@tnjustice.org)  
[www.tnjustice.org](http://www.tnjustice.org)

Thank you!

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